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Prosecutors, Accused Spy Made Deal, Judge Charges

By MARK STEIN, Times Staff Writer

Government prosecutors have made a deal with accused Silicon Valley spy James D. Harper Jr. to save him from the death penalty if he is found guilty, U.S. District Judge Samuel Conti charged Friday in San Francisco.

"The government and defense counsel have gotten together and decided this is not a death penalty case," Conti said. "I see nothing in any of the statutes to lead me to believe the death sentence is inapplicable."

Harper, 49, of Mountain View is accused of photocopying several hundred pounds of sensitive nuclear-missile defense studies from Systems Control Inc., a Palo Alto research company that had employed Harper's second wife before her death earlier this year.

Of the 67 reports he duplicated, a federal grand jury charged in a 24-page indictment last week, he sold 31 of them to Polish agents in Europe and Mexico for about \$250,000. The Poles, in turn, shared the reports with the Soviet Union, an earlier FBI affidavit said.

The judge, who set April 8 as the trial date, declined to say why he believes a deal has been struck or

why prosecutors would agree to such an arrangement.

Federal prosecutors and defense attorney Jerrold Ladar denied that a deal has been struck to gain Harper's assistance in building cases against others who may be involved in espionage, to protect U.S. counterspy methods from the scrutiny of a public trial or for any other reason.

Ladar, who has been Harper's sole counsel since Tustin attorney William Dougherty was fired more than a week ago, said the death penalty cannot be considered because of a 1972 decision by the U.S. Supreme Court.

If a death sentence is to be imposed, the court ruled, a statute must provide specific guidelines on such factors as the defendant's state of mind, malice, and character. The federal espionage laws that Harper is accused of breaking do not provide jury guidelines for imposing death.

However, Harper does face a maximum penalty of life in prison, Ladar said, and is therefore entitled to the special allowances made to defendants in capital cases, including two defense attorneys.